

Janet Lunceford - RE: City of Bremerton/Sesko

From: David Horton
To: Middleton, Alan
Date: 05/25/2004 3:14 PM
Subject: RE: City of Bremerton/Sesko

Agreed.

Thanks

>>> "Middleton, Alan" <AlanMiddleton@DWT.COM> 05/25/04 03:07PM >>>

We can agree that no interest will be transferred until the earlier of (a) a decision by the Court of the lien amount or (b) the setting aside in escrow (pending a decision by the Court) of so much of the purchase price as is necessary to satisfy the lien in the amount calculated by the City; PROVIDED that the Seskos may petition the Court to set a different amount. The Court is likely to protect the City's interests unless the City becomes unreasonable; and PROVIDED FURTHER that the motion is set for hearing on July 30, unless changed by agreement or by an order of the Court sua sponte.

You have our agreement to continue the motion until Friday, July 30, 2004.

-----Original Message-----

From: David Horton [mailto:dhorton@ci.bremerton.wa.us]
Sent: Tuesday, May 25, 2004 2:57 PM
To: AlanMiddleton@DWT.COM
Subject: RE: City of Bremerton/Sesko

The Court has already granted an unliquidated lien in its 1998 Judgment. This is recorded.

I would also expect the City and Seskos to negotiate to allow the sale to proceed by setting aside an appropriate amount. But there is nothing to prevent the Seskos from not going through escrow and merely quitclaiming their property to a third party. And the lien would then encumber the third party's property. The City would then be in the unenviable position of foreclosing on a third party. I do not think this scenerio likely, but it is possible, and I want to protect against it.

Can we agree that no interest will transfer until the lien is liquidated and entered, or denied; or proceeds from the sale in an amount equal to the City's calculation of the lien will be placed in escrow pending disposition. The City and Seskos agree to keep the motion on for 7/30/04 absent agreement of the parties or a sua sponte order of the court.

The City will do all it can to facilitate the sale to a third party as it is in both of our interests.

We have contacted the court and they said we could continue it by agreement to July 30, 2004. Please let me know if I have your agreement.

Thanks.

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>>> "Middleton, Alan" <AlanMiddleton@DWT.COM> 05/25/04 02:37PM >>>

If the court grants a lien, even without determining the amount, then no purchase would close in any event because the Seskos could not meet their obligation to deliver clear title. For that reason, I do not believe it's necessary for us to try to further anticipate what the Court might do. If the Court grants a lien but without determining the amount, and a sale is pending, then I would expect the Seskos and the City to negotiate to allow the sale to proceed but setting aside an appropriate sum in escrow pending a decision by the Court on the amount of the lien.

Under the circumstances, we can agree that no interest will be transferred until the Court has ruled on whether the City has a lien (but not necessarily the amount), provided that the City's motion is set for July 30, 2004, and any changes to that date are either by agreement or by the court's order sua sponte. (This is to prevent the City from tying up the property by delaying the motion indefinitely.)

Alan

-----Original Message-----

From: David Horton [mailto:dhorton@ci.bremerton.wa.us]

Sent: Tuesday, May 25, 2004 2:15 PM

To: AlanMiddleton@DWT.COM

Subject: RE: City of Bremerton/Sesko

The motion will not be heard on Friday. Your suggestions are all reasonable.

I think for our agreement to meet its goal, we would need to have the closing subsequent to the court entering the lien amount (or denying it).

Let me know if this is acceptable. If so, we will check with the court and either re-note it, or continue it by agreement.

thanks.

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>>> "Middleton, Alan" <AlanMiddleton@DWT.COM> 05/25/04 01:57PM >>>

David, I assume you meant July 30, 2004, not 2005 (confirmed by your email just received). Based upon that assumption, the Seskos will agree not to transfer any interest in the Arsenal Way property until after that date. To be clear, we do not understand this agreement to prevent the Seskos from listing the property for sale, from receiving and even accepting offers on the property, as long as closing is scheduled for some date after July 30, 2004. Frankly, a sale at fair market value (compared to a price obtained at foreclosure) is in everyone's interest, if it occurs.

I assume we have reached agreement and that the motion will not be heard this Friday. My guess is that the court administrator will want the motion stricken, rather than reset for upwards of two months out, but we can accept either a continuance or strike/renote.

Please let me know ASAP if my assumption is incorrect.

We would be happy to sit down and discuss prospects for mediation; however, the discussion will be most useful after the Seskos have had a chance to return home and provide us with the data/documents necessary to respond. Let's touch base again in 30 days. In the meantime, we will work with the Seskos, both in preparing their response (necessary for us to advise them) and in developing possible global solutions.

Thx

-----Original Message-----

From: David Horton [mailto:dhorton@ci.bremerton.wa.us]

Sent: Tuesday, May 25, 2004 1:40 PM

To: AlanMiddleton@dwt.com

Cc: chuckmaduell@dwt.com; dennisreynolds@dwt.com

Subject: Re: City of Bremerton/Sesko

Alan:

Thank you for the quick response.

I will agree to continue the hearing to Friday, July 30, 2005. This is conditioned on your clients' agreement not to transfer any interest in the Arsenal Way property until after that date. I discussed this condition with Mr. Maduell when he first asked for a continuance - before the motion was filed. This is because the City does not wish to involve a potentially innocent third party purchaser in this litigation. Chuck indicated this was a reasonable request, but I never heard back from him. If your client will not agree to this, I will agree only to a two week continuance.

Before we committed to a specific mediation date, I would want to sit down with you (or Chuck or Dennis) after you have had a chance to discuss the City's demands with the Seskos to see if a mediation would even be productive. I say this because the Seskos --to this point-- have not approached any of the issues reasonably.

Give me a call if you have any questions. Again, thank you for the timely response.

>> "Middleton, Alan" <AlanMiddleton@DWT.COM> 05/25/04 12:54PM >>>

David, we have discussed your email from yesterday with our clients. The Seskos are prepared to commit to mediate all disputes between themselves and the City. We believe that a mediation could occur within approximately two months.

The timing of the mediation must of necessity depend to a large degree on Mr. Sesko's health. For your information, he has been (b) (6)

(b) (6). We anticipate that he will be returning home sometime next week. Timing of a mediation will then depend on how much assistance he is able to give us. Obviously, we cannot expect him to pull all-nighters to pull documents and data together. We believe two months is a reasonable target.

Frankly, Chuck Maduell and I believe that you agreed to extend the hearing date unconditionally in our conference call. Nonetheless, we believe that the commitment outlined above should meet the new conditions outlined in your email for the City to strike the pending motion. If that is not the case, please let me know ASAP. Given Mr. Sesko's inability to assist us in responding to the motion, we will move immediately for a continuance.

Alan S. Middleton

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